

Amend Regulation Section 1859.2

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAAAs that will make up the Super HSAA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

“Approved Application(s)” means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 07/01); SAB 50-02, *Existing School Building Capacity*, (Revised 07/01); SAB 50-03, *Eligibility Determination*, (Revised 07/01); and SAB 50-04, *Application for Funding*, (Revised ~~07/02~~ 08/02), as appropriate, and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

“Attendance Area” shall have the meaning set forth in Education Code Section 17070.15(b).

“Board” means the State Allocation Board as established by Section 15490 of the Government Code.

“CBEDS Report” means the enrollment information provided through the California Basic Education Data System by school districts to the CDE.

“California Department of Education” (CDE) means the offices within that department that have responsibility for school facilities matters.

“Certification” means the act of affirmatively representing, asserting or verifying circumstances, data or information as required by the Act or this subgroup.

“Class B Construction Cost Index” is a construction factor index that is provided monthly by Marshall and Swift, for the Western area, for structures made of reinforced concrete or steel frames, concrete floors, and roofs, and accepted and used by the Board.

“Classroom” means a teaching station that has the same meaning as the term used in Education Code Section 17071.25(a)(1).

“Classroom Provided” means a classroom acquired by lease, lease-purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.

“Committee” shall have the meaning set forth in Education Code Section 17070.15(e).

“County Fund” shall have the meaning set forth in Education Code Section 17070.15(j).

“Current Replacement Cost” means \$300 per square foot for toilet space and \$150 per square foot for all other spaces. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

“Department” shall have the meaning set forth in Education Code Section 17070.15(d).

“District Representative” means a member of a school district staff or other agent authorized to serve as

“District Representative” to execute and file an application with the Board on behalf of the district and/or act as liaison between the Board and the district.

“Division of the State Architect (DSA)” means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety and access compliance.

“Elementary School Pupil” means a student housed in a school serving Kindergarten through sixth grade, or any combination of Kindergarten through sixth grade.

“Encumbered for Specific Purposes” means a commitment of funds by the school district to meet a legally binding obligation.

"Energy Audit" means an energy analysis and report which sets forth the utility savings that could be generated if the proposed project was designed, constructed, and equipped with energy efficiency and renewable technologies that would make the proposed project exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the applicable California Building Standards Code.

"Environmental Hardship" means the State funding for site acquisition as authorized by Section 1859.75.1.

"Excessive Cost Hardship Grant" means the funding provided pursuant to Education Code Sections 17075.10 and 17075.15.

"Executive Officer" means the individual appointed by the Governor to direct the Office of Public School Construction, and who concurrently serves as Executive Officer to the Board.

"Existing School Building Capacity" means the district's total capacity to house pupils as calculated pursuant to Sections 1859.30 through 1859.33.

"Facility" means all or a portion of any real property, site improvements, utilities and/or buildings or other improvements contained in the project.

"Facility Hardship" means new or replacement facilities authorized by Section 1859.82 (a) or (b).

"Field Act Facility" means a school building meeting the requirements contained in Education Code Section 17280, et seq.

"Financial Hardship" means State funding for all or a portion of the district's matching share required by Section 1859.77.1 or 1859.79.

"Fund" shall have the meaning set forth in Education Code Section 17070.15(i).

"General Site Development" means on-site hard surfaced areas for foot traffic, driveways, walks, parking, curbs and gutters; outdoor instructional play facilities such as turfed or paved play areas, permanent playground equipment, outdoor places of assembly, tennis/handball courts, running tracks and baseball, football and soccer fields; applicable landscaping of building frontages and outdoor facilities noted above.

"Governmental Agency" shall include but is not limited to a public entity as defined in Government Code Section 7260(a) including California federally recognized or historically established tribal governments.

"High School Attendance Area (HSAA)" means an attendance area.

"High School Pupil" means a student in a school serving ninth through twelfth grade or any combination of ninth through twelfth grade.

"In Escrow, Governmental Entities" means the approval and signature of instrument(s) that will convey a specified school parcel or site from the public/government entity including the federal government for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"In Escrow, Non-Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Independent Audit" means an examination and report of the district's accounts by a certified public accounting firm.

"Instrument" means a written, legally enforceable agreement, approved and signed by all parties to the escrow, for the conveyance to the district of real estate for a specified parcel or site, that includes a compensation clause and either a purchase option agreement, a purchase agreement, promissory note, lease agreement, installment sales contract, gift, or other real estate conveyance valid in the State of California for property conveyed from a public/government entity, including the federal government.

"Interim Housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities.

"Individual With Exceptional Needs" shall have the meaning set forth in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

"Joint Use Project" means a project approved by the Board pursuant to Education Code Sections 17050 and 17051.

"Lease-Purchase Program (LPP)" means the Leroy F. Greene State School Building Lease-Purchase Law of 1976, commencing with Education Code Section 17000.

"Major Maintenance" shall have the meaning set forth in Education Code Section 17070.77(b).

"Material Inaccuracy" means any falsely certified eligibility or funding application related information submitted by school districts, architects or other design professionals that allowed the school district an advantage in the funding process.

"Mello-Roos Bonds" means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Middle School Pupil" means a student in a school serving sixth through eighth grade, or seventh and eighth grades.

"Modernization" shall have the meaning set forth in Education Code Section 17070.15(f) for purposes of projects subject to Subgroup 5.5, Article 2, commencing with Section 1859 or Education Code Section 17021 under the Lease-Purchase Program.

"Modernization Additional Grant" means the funding provided pursuant to Education Code Section 17074.10(c) and (e).

"Modernization Adjusted Grant" means the Modernization Grants, plus any Excessive Cost Hardship Grant.

"Modernization Grant" means the funding provided pursuant to Education Code Section 17074.10(a).

"Modernization Grants" means the Modernization Grant plus any Modernization Additional Grant.

"Modernization Eligibility" means the result of the calculation contained in either Option A or B of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01).

"Multi-Track Year-Round Education (MTYRE)" means a school education program in which the students are divided into three or more groups on alternating tracks, with at least one group out of session, and the other groups in session during the same period.

"New Construction Additional Grant" means funding provided pursuant to Education Code Section 17072.10(c), (d) and (e); Education Code Section 17072.12, Education Code Section 17072.13 and Education Code Section 17072.18.

"New Construction Adjusted Grant" means the New Construction Grants, plus any Excessive Cost Hardship Grant.

"New Construction Eligibility" means the result of the calculation determined in Education Code Section 17071.75.

"New Construction Grant" means the funding provided pursuant to Education Code Section 17072.10(a).

"New Construction Grants" means the New Construction Grant plus any New Construction Additional Grant.

"Non-Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs not defined in Education Code Section 56030.5 but included in 34 Code of Federal Regulations Part 300.5.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the Act on behalf of the Director.

"Permanent Area" means any area not included in a portable classroom.

"Permanent Classroom" means any classroom not meeting the definition of portable classroom.

"Phase C Approval" means the construction approval by the Board under the Lease-Purchase Program.

"Phase One Environmental Site Assessment (POESA)" shall have the meaning set forth in Education Code Section 17210(g).

"Phase P Approval" means the planning approval by the Board under the Lease-Purchase Program.

"Phase S Approval" means the site approval by the Board under the Lease-Purchase Program.

"Portable Classroom" shall have the meaning set forth in Education Code Section 17070.15(k).

"Preliminary Endangerment Assessment (PEA)" shall have the meaning set forth in Education Code Section 17210(h).

"Priority One" shall have the meaning set forth in Education Code Section 17017.7(a)(1).

"Priority Two" shall have the meaning set forth in Education Code Section 17017.7(a)(2).

"Property" shall have the meaning set forth in Education Code Section 17070.15(g).

"Proposition 1A" means the Initiative Measure (Prop. 1A) enacted by approval of the voters at the November 4, 1998 general election.

"Proposition 39" means the Initiative Measure (Prop. 39) enacted by passage at the November 7, 2000 general election which amended Sections 15102, 15106, 35233, and 72533 and added Chapter 1.5 (commencing with Section 15264) to Part 10, of the Education Code, and added applicable sections of the California Constitution relating to passage of local school bonds with a 55 percent vote of the electorate at a primary or general election, a regularly scheduled local election, or a statewide special election.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve.

"Quarterly Basis" means a three-month period commencing on January 1, April 1, July 1 and October 1 of each calendar year.

"Ready for Apportionment" means a final review of an Approved Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an apportionment or eligibility determination, and the OPSC will recommend approval to the Board.

"Rehabilitation Cost" means health and safety mitigation cost that is less than 50 percent of the current replacement cost of the facility.

"Remedial Action Plan (RAP)" means a plan approved by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code Section 25356.1.

"Resource Specialist Program" means pupils that meet the definition of Non-Severely Disabled Individual with Exceptional Needs as defined in Section 1859.2 that are not enrolled in a special day class.

"Response Action (RA)" means the removal of hazardous materials and solid waste, the removal of hazardous substances, and other remedial actions in connection with hazardous substances at the site.

"School Building Capacity" shall have the meaning set forth in Education Code Section 17070.15(l).

"School District" shall have the meaning set forth in Education Code Section 17070.15(h).

"School Facilities Improvement District" means a legal entity authorized by Education Code Section 15300, to generate school facilities funding.

"School Facility Program (SFP)" means either the new construction or modernization programs implemented under the Act, by these Subgroup 5.5 regulations.

"Secondary School Pupil" means a student in the seventh through the twelfth grade.

"Section" means a section in these Subgroup 5.5 regulations.

"Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs as defined in Education Code Section 56030.5.

"Small School District" means a school district with districtwide enrollment reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C on the latest *Enrollment Certification/Projection* Form SAB 50-01(Revised 07/01) used to determine or adjust the district's baseline eligibility pursuant to Sections 1859.50 and 1859.51 or submitted separately to the OPSC, that is 2,500 or less.

"Special Day Class" means a class that has pupils enrolled that are individuals with exceptional needs.

"Square Footage" means the enclosed area measured from the outside face of exterior structural walls of the building. For interior areas or portions of building areas, the enclosed area shall be measured from the centerline of the interior demising wall.

"Student Yield Factor" means the number of students each dwelling unit will generate for purposes of an enrollment augmentation.

"Substantial Enrollment Requirement (SER)" means a district that is operating on a Multi-Track Year-Round Education basis pursuant to Education Code Sections 17017.6 and 17017.7(c).

"Super High School Attendance Area (Super HSAA)" means two or more HSAA's that are adjacent to each other.

"Unfunded List" means an information list of unfunded projects.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17074.10, 17075.10, 17075.15, 17280, and 56026, Education Code. Section 53311, Government Code.

Section 1859.21. SFP Application for Funding.

A district seeking funding for a modernization or new construction project shall complete and file with the OPSC, the *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), which is incorporated by reference.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.63, 17072.30 and 17074.15, Education Code.

Amend Regulation Section 1859.50

Section 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01). Eligibility determination for New Construction Grants may be requested on either a district-wide basis or on a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district-wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district-wide basis.

If a district requests to re-file its eligibility determination from district-wide to HSAA or Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district-wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), for a new construction SFP grant.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

Amend Regulation Section 1859.70

Section 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), after completing the applicable requirements in Section 1859.20.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01), or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17071.10, 17072.10 and 17074.10, Education Code.

Amend Regulation Section 1859.73.1

Section 1859.73.1. New Construction Additional Grant for Project Assistance.

The New Construction Grant will be increased by \$3,750 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised 07/02 08/02) submitted to the OPSC no later than January 1, 2003.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.10, Education Code.

Amend Regulation Section 1859.73.2

Section 1859.73.2. Construction Additional Grant for Replaced Facilities.

- (a) The New Construction Grant will be increased by the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:
 - (1) The school must be on MTYRE at the time the Approved Application is accepted.
 - (2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.
 - (3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:
 - (A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.
 - (B) 200 pupils.
 - (4) The sum of (A) and (B) below is less than the amount determined in (E) below:
 - (A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

- (B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.
- (C) Multiply the New Construction Grants requested in box 2 of the *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), by .01775 for K-6, .021 for 7-8 and .02472 for 9-12.
- (D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.
- (E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.
- (5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.
- (6) The one-story buildings to be replaced on the existing site may not be leased facilities.
- (7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.
- (b) If the criteria in (a) are met, the New Construction Grant will be increased by \$153.30 per square foot for toilet facilities and by \$78.30 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:
 - (1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.
 - (2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).
 - (3) The amounts shall be increased for excessive cost grants as provided pursuant to Section 1859.83(a) and (d).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the New Construction Grant for the SFP project.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17071.46 and 17074.56, Education Code.

Amend Regulation Section 1859.74

Section 1859.74. Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP or projects that qualify for site acquisition funds under Section 1859.74.5, the New Construction Grant will be increased for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

- (1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (2) Increased by four percent of the actual amount determined in (a) above, but not less than \$50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- (3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

- (1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (2) Increased by four percent of the appraised value determined in (b) above, but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- (3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12 and 17251, Education Code.

Amend Regulation Section 1859.74.1

Section 1859.74.1. Site Acquisition Guidelines.

To receive a New Construction Additional Grant for site acquisition costs, the district must certify on the *Application for Funding*, Form SAB 50-04 (Revised 07/02 08/02), that the appraisal of the property was made utilizing the following criteria:

- (a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:
 - (1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.
 - (2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.
- (b) Consideration in the appraisal was made for net useable acreage and severance damages.
- (c) The district or its legal counsel has contracted for appraisal services.
- (d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.
- (e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35 and 17072.12, Education Code.

Adopt Regulation Section 1859.74.5

Section 1859.74.5. New Construction Additional Grant for District-Owned Site Acquisition Cost.

- (a) As an alternative to site acquisition funding provided by Sections 1859.74, 1859.74.2, 1859.74.3 and 1859.74.4, the Board shall provide an additional grant, in addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Sections 1859.71 and 1859.71.1 for one half of the value of the district-owned site as determined in (b) provided all the following criteria are met:
- (1) The site has been owned by the applicant district for a period of at least five years from the date the Approved Application is received by the OPSC. The district may demonstrate ownership of the site by any of the following:
 - (A) A grant deed.
 - (B) Escrow closing statement.
 - (C) Order of immediate possession.
 - (D) Other evidence satisfactory to the Board.
 - (2) The district-owned site was not purchased with funds made available from the LPP, the SFP or Proposition 1A.
 - (3) The district-owned site has been productively used by the applicant district for the entire five-year period immediately proceeding the date the Approved Application is submitted to the OPSC for any of the following:
 - (A) The applicant's district administrative facility.
 - (B) A childcare or preschool program operated by the applicant district.
 - (C) An adult education program operated by the applicant district.
 - (D) Other use satisfactory to the Board.
 - (4) At least 75 percent of the useable acres of the district-owned site contained buildings and/or General Site Development that was used for the entire five year period for the qualifying purpose identified in (a)(3).
 - (5) The CDE has determined that the district-owned site is not otherwise available as a school site.
 - (6) The district has completed a cost benefit analysis as described in Section 1859.74.6 which indicates the current estimated value of the district-owned site is less than the current estimated value of an alternative site in the district.
 - (7) The district-owned site is approvable by the CDE for school purposes.

If all the criteria in items (a)(1) through (a)(7) are met, the OPSC will recommend to the Board that it make a finding that the non-school function on the site must be discontinued or relocated in order to utilize the site as a school site.

A district may request the Board make a finding that the non-school function on the district-owned site must be discontinued or relocated in advance of submittal of a funding application provided it meets all the criteria in (a).

- (b) The value of the district-owned site shall be the sum of all the following:
- (1) The value of the district-owned site determined by an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the site and shall be made using the guidelines in Section 1859.74.1.
 - (2) The approved relocation expense of the district-owned site that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation

assistance. Do not include relocation expense applicable to the relocation of district personnel, district buildings/furnishings or district equipment.

- (3) Four percent of the appraised value determined in (b)(1), but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- (4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA applicable to the district-owned site.

The amounts above shall be reduced, on a prorated basis, by the percentage of any excess acreage of the district-owned site that exceeds the master plan site acreage approved by the CDE.

If the acreage of the district-owned site is less than the site size recommended by the CDE for the master planned project capacity and the district plans on acquiring additional acreage as part of the project, the additional acreage, up to the CDE recommended site size, may be funded under the provisions of Section 1859.74.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12 and 17251, Education Code.

Adopt Regulation Section 1859.74.6

Section 1859.74.6. District-Owned Site Cost Benefit Analysis.

Pursuant to Subdivision (d) of Education Code Section 17072.12, a cost benefit analysis must be made to determine if it is more economical to utilize the existing district-owned site currently used for a non-school function as a school site rather than acquire an alternative site in the district. A determination that it is more economical to use the existing district-owned site as a school site will be made if the current estimated value of the district-owned site as determined in (a)(3) is less than the current estimated value of an alternative site as determined in (b)(5).

(a) Current Estimated Value of District-Owned Site.

- (1) Determine the value of the district-owned site by a preliminary appraisal or an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the site and shall be made using the guidelines in Section 1859.74.1. The appraised value shall be increased for the following:
- (A) The relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance. Do not include relocation expenses applicable to the relocation of district personnel, district buildings/furnishings or district equipment.
- (B) Four percent of the appraised value determined in (a)(1), but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- (C) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.
- (2) Determine the estimated current site development cost that would be necessary on the district-owned site if it were to be used as a school site pursuant to Section 1859.76. Estimated cost for demolition of existing buildings on the site may be included as a site development cost.
- (3) Add the amount determined in (a)(1) to the amount determined in (a)(2).

(b) Current Estimated Value of Alternative Site.

- (1) The district must identify an alternative site within the boundaries of the district that meet all the following:

- (A) The alternative site is an approvable site by the CDE.
- (B) The alternative site is located no more than three miles from the district owned site if the project is for a high school, no more than two miles from the district owned site if the project is for a middle school and no more than one mile from the district owned site if the project is for an elementary school.
- (2) Determine the value of the alternative site selected in (b)(1) by a preliminary appraisal or an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the alternative site and shall be made using the guidelines in Section 1859.74.1. The appraised value shall be increased for the following:
 - (A) The relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (B) Four percent of the appraised value determined in (b)(2), but not less than \$50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
 - (C) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.
 - (D) The estimated current site development cost that would be necessary on the alternative site if it were to be used as a school site pursuant to Section 1859.76. Estimated cost for demolition of existing buildings on the alternative site may be included as a site development cost.
- (3) Determine the average appraised value per acre by dividing the appraised value of the alternative site determined in (b)(2) by the number of acres of the alternative site.
- (4) Multiply the average appraised value per acre of the alternative site determined in (b)(3) by the number of acres of the district-owned site identified in (a).
- (5) Multiply the quotient determined in (b)(4) by 110 percent.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12 and 17251, Education Code.

Amend Regulation Section 1859.75.1

Section 1859.75.1. Separate Site Apportionment for Environmental Hardship.

- (a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:
 - (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
 - (3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.
 - (4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.
- (b) If the conditions in (a) are met, the district is eligible for a separate apportionment for one half of the following:
 - (1) The lesser of the appraised value of the site as determined in Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous materials/waste removal and/or remediation costs for the site.

- (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (3) Four percent of the lessor of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.
- (4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02).

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17076.10, Education Code.

Amend Regulation Section 1859.76

Section 1859.76. New Construction Additional Grant for Site Development Costs.

The New Construction Grant will be increased by 50 percent of the following approved site development and applicable design costs:

- (a) Service site development cost, within school property lines for:
 - (1) Site clearance including the removal of trees, brush, and debris.
 - (2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.
 - (3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.
 - (4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.
 - (5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.
 - (6) On-site drainage facilities including inlets below grade drainage facilities and retention basins.
 - (7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.
 - (9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set-up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.
 - (10) Fire code requirements on site that are not a part of the building.
 - (11) Funding for ~~multilevel~~ parking structures on a new construction project when all the following have been met:
 - (A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.
 - (B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

- (C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9-12 pupils.
- (D) The state grant does not exceed \$7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.
- (E) The parking structure is any of the following:
 - 1. It is multilevel and has at least two floors of parking space.
 - 2. It is single level with site development above the single level parking space.
 - 3. It is single level that is subterranean or below ground level with site development above the single level parking space.
 - 4. It is single level with buildings above the single level parking space.
- (12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).
- (b) Off-site development cost on up to two immediately adjacent sides of the site, for the following:
 - (1) Curbs, gutters and paving of streets not to exceed one-half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one-half of mandated street width adjacent to the project.
 - (2) Sidewalks mandated by local ordinances.
 - (3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.
 - (4) City and/or county or special district fees pursuant to active ordinances.
 - (5) Reasonable cost for storm drains to point of connection.
 - (6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:
 - (A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.
 - (B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.
 - (C) The state grant does not exceed \$50,000.
 - (D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.
 - (E) The SAB has determined that development of additional pedestrian paths is reasonable.
- (c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:
 - (1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).
 - (2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.
 - (3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.
 - (4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.
 - (5) Communication systems: Installation of service from the company to the nearest distribution center.

The district must submit a detailed cost estimate for all requests for site development work and any justification documents that will support the work with the *Application for Funding*, Form SAB 50-04 (Revised

~~07/02~~ 08/02).

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

Amend Regulation Section 1859.77.1

Section 1859.77.1. New Construction District Matching Share Requirement.

Except in the case of financial hardship provided by Section 1859.81 or any additional grant provided for a district-owned site acquisition cost pursuant to Sections 1859.74.5 or 1859.81.2, any increase to the New Construction Grant for New Construction Additional Grants, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83, shall require a district matching share contribution on a dollar-for-dollar basis.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30 and 17077.10, Education Code.

Amend Regulation Section 1859.78.2

Section 1859.78.2. Modernization Additional Grant for Project Assistance.

The Modernization Grant will be increased by \$2,000 for small school districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

This allowance shall only apply to any acceptable *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) submitted to the OPSC no later than January 1, 2003.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17074.10, Education Code.

Amend Regulation Section 1859.79.3

Section 1859.79.3. Minimal Requests for Modernization Grant Funds.

Districts seeking a modernization grant must submit an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Application for Funding, Form SAB 50-04 (Revised ~~07/02~~ 08/02) requesting Modernization Grant Funds that do not meet the above criteria will not be accepted by the SAB.

Note: Authority cited: 17070.35, Education Code.

Reference: Sections 17074.25 and 100420(c), Education Code.

Amend Regulation Section 1859.81

Section 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The analysis is subject to approval by the Board.

From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (a)(7) as follows:

- (1) Determine the current enrollment of the district by grade level as shown on the latest *Enrollment Certification/Projection*, Form SAB 50-01 (Rev. 07/01).
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted an *Expenditure Report*, Form SAB 50-06 (Rev. 01/00) indicating that the project is 100 percent complete.
- (3) Subtract (a)(2) from (a)(1).
- (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on the latest *Existing School Building Capacity*, Form SAB 50-02 (Rev. 07/01).
- (5) Multiply the classrooms determined in (a)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (a)(5) from the difference determined in (a)(3) by grade level.
- (7) Divide the difference by grade level determined in (a)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall

be the sum of the positive numbers determined in (a)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (b) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
 - (1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
 - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
 - (3) It is a County Superintendent of Schools.
 - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$3 million or less.
 - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district shall be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (b)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) that were denied financial hardship status.
- (B) Divide the number by grade level determined in (b)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been

included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17075.10, Education Code.

Amend Regulation Section 1859.81.1

Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

- (a) For a new construction project, a separate apportionment for site acquisition, with the exception of site acquisition funding authorized by Section 1859.81.2, when all the following requirements are met:
 - (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
 - (3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.
- (b) If the conditions in (a) are met, the Board will apportion all the following less any district funds available for the project pursuant to Section 1859.81(a):
 - (1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.
 - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
 - (3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.
 - (4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.
- (c) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a). The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits an *Application For Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02). A district seeking a separate apportionment for site acquisition or design costs shall submit an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02). If a new construction project

received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section. The *Application For Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) must be for at least 50 percent of the New Construction Grant or at least 80 percent of the Modernization Grant the district requested as a separate design apportionment.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date [see *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02)] to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

Note: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code.

Reference: Sections 17072.12, 17072.20 and 17072.33, Education Code.

Adopt Regulation Section 1859.81.2

Section 1859.81.2. Separate Apportionment for District-Owned Site Acquisition Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

- (a) A separate apportionment for district-owned site acquisition cost authorized by Section 1859.74.5 when all the following are met:
 - (1) The district has eligibility for new construction grants that equal at least 50 percent of the CDE master plan capacity of the site.
 - (2) All the criteria in Section 1859.74.5(a)(1) through (1)(7) are met.
- (b) If the conditions in (a) are met, the Board will apportion one half of the value of the district-owned site as determined in Section 1859.74.5(b).

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.13 and 17072.20, Education Code.

Adopt Regulation Section 1859.81.3

Section 1859.81.3. Use of District-Owned Site Acquisition Apportionment.

Any funds authorized by Sections 1859.74.5 or 1859.81.2 shall be expended in accordance with Education Code Section 17072.35 and may also be used for the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.20 and 17072.35, Education Code.

Amend Regulation Section 1859.82

Section 1859.82. Facility Hardship Grant.

A district is eligible for facility hardship grant funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

- (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

- (1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for an excessive cost modernization grant for rehabilitation costs pursuant to Section 1859.83 (e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the Division of the State Architect.

- (2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the replaced facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$153.30 per square foot for toilet facilities and \$78.30 per square foot for all other facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district or the HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

- (b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:
 - (1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.
 - (2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.
 - (3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of

insurance was prohibitive.

If the district qualifies, the district is eligible for funding a new construction project. The funding amount provided shall be \$78.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$153.30 per square foot for toilet facilities. Additional grants may be provided for applicable site development costs pursuant to Section 1859.76 and excessive cost grants pursuant to Section 1859.83. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

<i>Facility</i>	<i>Elementary School Pupils</i>	<i>Middle School Pupils</i>	<i>High School Pupils</i>
Multi-Purpose	5.3 sq. ft. per pupil minimum 3,500 sq. ft.	5.3 sq. ft. per pupil minimum 4,500 sq. ft.	6.3 sq. ft. per pupil minimum 7,500 sq. ft.
Mech./Elect.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
Food Service	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,480 sq. ft.	2 sq. ft. per pupil minimum 400 sq. ft. maximum 1,880 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft. maximum 3,975 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium	N/A	7 sq. ft. per pupil minimum 5828 sq. ft.	8 sq. ft. per pupil minimum 7280 sq. ft.
Shower/Locker	N/A	4 sq. ft. per pupil minimum 400 sq. ft.	5 sq. ft. per pupil minimum 500 sq. ft.
P.E. Office	N/A	50 sq. ft./coach	50 sq. ft./coach
P.E. Storage	N/A	0.5 sq. ft. per pupil minimum 500 sq. ft.	0.5 sq. ft. per pupil minimum 500 sq. ft.
Bleachers	N/A	0.9 sq. ft. per pupil maximum 1820 sq. ft.	1.3 sq. ft. per pupil maximum 2600 sq. ft.
Mech/Elect	N/A	0.3 sq. ft. per pupil minimum 100 sq. ft.	0.3 sq. ft. per pupil minimum 100 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + 600 sq. ft.	3.3 sq. ft. per pupil + 600 sq. ft.	4.3 sq. ft. per pupil + 600 sq. ft.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit an *Application For*

Funding, Form SAB 50-04 (Revised ~~07/02~~ 08/02) for the replaced facilities:

- (1) Within 18 months if the replacement facilities will be located on the same site.
- (2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10 and 17075.15, Education Code.

Amend Regulation Section 1859.90

Section 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(c) or 1859.81.2, the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 01/01), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Sections 1859.81.1(c) or 1859.81.2 to the district within 30 calendar days of the apportionment.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15 and 17076.10, Education Code.

Amend Regulation Section 1859.100

Section 1859.100. Restricted On-going and Major Maintenance Fund.

A district, regardless of size, shall certify on the *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), that a restricted account within the district's general fund has been established for the exclusive purpose of providing on-going and major repair of its facilities, pursuant to Education Code Section 17070.75.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17070.75, Education Code.

Amend Regulation Section 1859.101

Section 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), that the district can maintain its facilities with a lesser annual deposit.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17070.75, Education Code.

Amend Regulation Section 1859.102

Section 1859.102. Maintenance Plan.

A district shall certify on the *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02), that it has developed and implemented an on-going and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.75, 17070.77, and 17585, Education Code.

Amend Regulation Section 1859.103

Section 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district including the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, ~~t~~The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63 and 17072.12, Education Code.

Amend Regulation Section 1859.104

Section 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

- (a) An expenditure report from the district on the *Expenditure Report*, Form SAB 50-06 (Revised 01/00), which is incorporated by reference. The program reporting requirements are as follows:
 - (1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:
 - (A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.
 - (B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.
 - (2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.
- (b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the funds were received in accordance with Section 1859.81.1(c) or the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.
- (c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).
- (d) If an apportionment was made for a district-owned site pursuant to Section 1859.74.5, a certification that the non-school function currently taking place on the district-owned site has been discontinued or relocated. The certification must be submitted to the OPSC no later than the following dates:
 - (1) If the project is for an elementary school, 66 months from the date of the site apportionment.
 - (2) For all other projects, 78 months from the date of the site apportionment.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17070.35, 17072.12, 17072.13 and 17076.10, Education Code.

Adopt Regulation Section 1859.105.2

Section 1859.105.2. Program Accountability for District-Owned Site Acquisition Cost.

When the district has received funds pursuant to Section 1859.74.5 for a district-owned site and has not submitted the certification required pursuant to Section 1859.104(d), the site apportionment is subject to the provisions of material inaccuracy as prescribed in Education Code Section 17070.51.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.51 and 17072.12, Education Code.

Amend Regulation Section 1859.107

Section 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re-approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application that has received an approval pursuant to Section 1859.95, but has not received an apportionment may receive an adjustment as allowed under Regulation Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02). The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

A funding application submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02). The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(l) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02).

Any application for new construction eligibility determination that has not received an approval must be amended to conform to the *Existing School Building Capacity*, Form SAB 50-02 (Revised 07/01) and the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02).

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02).

Any application for modernization eligibility determination that has not received an approval must be amended to conform to the *Eligibility Determination*, Form SAB 50-03 (Revised 07/01) prior to submittal of an *Application For Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02).

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re-establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of an *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02). The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grants, may re-file on another eligibility determination basis provided it withdraws all previously submitted *Application for Funding*, Form SAB 50-04 (Revised ~~07/02~~ 08/02) requests for New Construction Grants, including those on the Unfunded List.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.63, and 17074.56, Education Code.